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Attorneys for Plaintiff and the Proposed Class

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ANGELA JOHNSON, on behalf of
herself, and all others similarly situated,

Plaintiff,

v.

BENNETT LAW, A PROFESSIONAL
LIMITED LIABILITY COMPANY
d/b/a BENNETT LAW, COMPLETE
PAYMENT RECOVERY SERVICES,
INC., CERTEGY CHECK SERVICES,
INC., and FIDELITY NATIONAL
INFORMATION SERVICES, INC.,

Defendants.

Case No.: 3:12-cv-03043-CAB-RBB

CLASS ACTION

**FIRST AMENDED COMPLAINT
FOR DAMAGES AND
INJUNCTIVE RELIEF PURSUANT
TO THE TELEPHONE
CONSUMER PROTECTION ACT,
47 U.S.C. §§ 227 et seq.**

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. Angela Johnson (“Plaintiff”) brings this Class Action Complaint for
3 damages, injunctive relief, and any other available legal or equitable remedies,
4 resulting from the illegal actions of Bennett Law, A Professional Limited Liability
5 Company d/a/a Bennett Law, Complete Payment Services, Inc., Certegy Check
6 Services, Inc., and Fidelity National Information Services, Inc. (“Defendants”), in
7 negligently, and/or willfully contacting Plaintiff through telephone calls on
8 Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection
9 Act, 47 U.S.C. §§ 227 *et seq.*, (“TCPA”), thereby invading Plaintiff’s privacy.
10 Plaintiff alleges as follows upon personal knowledge as to his own acts and
11 experiences, and, as to all other matters, upon information and belief, including
12 investigation conducted by his attorneys.

JURISDICTION AND VENUE

13
14 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff
15 seeks up to \$1,500 in damages for each call in violation of the TCPA, which, when
16 aggregated among a proposed class number in the tens of thousands, exceeds the
17 \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiff alleges a
18 national class, which will result in at least one class member belonging to different
19 states than that of the Defendants, providing jurisdiction under 28 U.S.C. Section
20 1332(d)(2)(A). Therefore, both elements of diversity jurisdiction under the Class
21 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

22 3. This Court has federal question subject matter jurisdiction under 28
23 U.S.C. § 1331, as the action arises under the TCPA, a federal statute.

24 4. Venue is proper in the United States District Court for the Southern
25 District of California pursuant to 28 U.S.C. § 1391(b) and 1441(a) because
26 Defendants, at all times herein mentioned, are duly authorized and in good standing
27 to conduct business in California and do business within this judicial district.
28

PARTIES

5. Plaintiff Angela Johnson is, and at all times mentioned herein was, a resident of the State of South Carolina. She is, and at all times mentioned herein was a “person” as defined by 47 U.S.C. § 153 (32).

6. Plaintiff is informed and believes, and thereon alleges, that Defendant Bennett Law PLLC is, and at times mentioned herein was, a professional limited liability company. All of its members are believed to be citizens of the State of Utah with its principal place of business at Suite 200, 10542 South Jordan Gateway, South Jordan, Utah 84095. Defendant is, and at all times mentioned herein was, a corporation and a “person” as defined by 47 U.S.C. § 153 (32). Defendant provides debt collection services and collects on those debts through the use of telephone calls. Plaintiff alleges that at all times relevant herein Defendant Bennett Law PLLC conducted business in the State of California and in the County of San Diego, and within this judicial district.

7. Plaintiff is informed and believes, and thereon alleges, that Defendant Complete Payment Recovery Services, Inc., is a Georgia corporation licensed to do business in California with its principal office located at 11601 Roosevelt Boulevard, North St. Petersburg Florida 33176. Defendant is, and at all times mentioned herein was, a corporation and a “person” as defined by 47 U.S.C. § 153 (32). Plaintiff alleges that at all times relevant herein Defendant, a corporation who functions as a debt collector, is duly authorized and in good standing to conduct business in California and does business within this judicial district. Plaintiff alleges that at all times relevant herein Defendant Complete Payment Recovery Services, Inc. conducted business in the State of California and in the County of San Diego, and within this judicial district.

8. Plaintiff is informed and believes, and thereon alleges, that Defendant Certegy Check Services, Inc., is a Delaware corporation licensed to do business in

1 California with its principal office located at 11601 Roosevelt Boulevard, North St.
 2 Petersburg Florida 33176. Defendant is, and at all times mentioned herein was, a
 3 corporation and a “person” as defined by 47 U.S.C. § 153 (32). Plaintiff alleges
 4 that at all times relevant herein Defendant Certegy Check Services, Inc. conducted
 5 business in the State of California and in the County of San Diego, and within this
 6 judicial district.

7 9. Plaintiff is informed and believes, and thereon alleges, that Defendant
 8 Fidelity National Information Services, Inc. is a Georgia corporation licensed to do
 9 business in California with its principal office located at 601 Riverside Avenue,
 10 Jacksonville Florida 32204. Defendant is, and at all times mentioned herein was, a
 11 corporation and a “person” as defined by 47 U.S.C. § 153 (32). Plaintiff alleges that
 12 at all times relevant herein Defendant Fidelity National Information Services, Inc.
 13 conducted business in the State of California and in the County of San Diego, and
 14 within this judicial district.

15 **THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**
 16 **(TCPA), 47 U.S.C. §§ 227 *et seq.***

17 10. In 1991, Congress enacted the Telephone Consumer Protection Act, 47
 18 U.S.C. § 227 (TCPA),¹ in response to a growing number of consumer complaints
 19 regarding certain telemarketing practices.

20 11. The TCPA regulates, among other things, the use of automated
 21 telephone equipment, or “autodialers.” Specifically, the plain language of section
 22 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless
 23 number in the absence of an emergency or the prior express consent of the called
 24 party.²

25 _____
 26 ¹ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394
 27 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the
 28 Communications Act of 1934, 47 U.S.C. §§ 201 *et seq.*

12. According to findings by the Federal Communication Commission (“FCC”), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.³

FACTUAL ALLEGATIONS

13. Plaintiff’s husband Michael Jones signed a contract with Home Depot Home Services for Home Depot Home Services to perform work on his home on or about September 27, 2011. In that application, Plaintiff’s husband Michael Jones provided his cell phone number.

14. Commencing in or around March of 2012, Plaintiff began receiving unsolicited phone calls to her cellular telephone number regarding her husband’s alleged debt to Home Depot Home Services from Defendants.

15. Plaintiff believes she was initially contacted from Defendants Complete Payment Recovery Services, Certegy Check Services, Inc. and/or Fidelity National Information Services, Inc.

16. Plaintiff believes the account was later transferred to Defendant Bennett Law PLLC in or around September of 2012.

17. These unsolicited phone calls placed to Plaintiff’s wireless telephone were placed via an “automatic telephone dialing system,” (“ATDS”) as defined by 47 U.S.C. § 227 (a)(1) and by using “an artificial or prerecorded voice” system as

² 47 U.S.C. § 227(b)(1)(A)(iii).

³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

1 prohibited by 47 U.S.C. § 227 (b)(1)(A), which had the capacity to produce or store
2 numbers randomly or sequentially, and to dial such numbers, to place telephone calls
3 to Plaintiff's cellular telephone.

4 18. The telephone number that Defendants, or its agents, called was
5 assigned to a cellular telephone service for which Plaintiff incurred a charge for
6 incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

7 19. These telephone calls constitute calls that were not for emergency
8 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

9 20. Plaintiff did not provide Defendants or its agents prior express consent
10 to receive unsolicited phone calls pursuant to 47 U.S.C. § 227 (b)(1)(A).

11 21. These telephone calls by Defendants or its agents therefore violated 47
12 U.S.C. § 227(b)(1).

13 22. Under the TCPA and pursuant to the FCC's January 2008 Declaratory
14 Ruling, the burden is on Defendants to demonstrate that Plaintiff provided express
15 consent within the meaning of the statute.

16 **CLASS ACTION ALLEGATIONS**

17 23. Plaintiff brings this action on behalf of herself and on behalf of and all
18 others similarly situated ("the Class").

19 24. Plaintiff represents, and is a member of the Class, consisting of all
20 persons within the United States who received any unsolicited telephone calls from
21 Defendants or its agents on their paging service, cellular phone service, mobile radio
22 service, radio common carrier service, or other service for which they were charged
23 for the call, through the use of any automatic telephone dialing system or artificial
24 or pre-recorded voice system as set forth in 47 U.S.C. § 227(b)(1)(A)(3) or artificial
25 or prerecorded voice, which telephone calls by Defendants or its agents were not
26 made for emergency purposes or with the recipients' prior express consent, within
27 four years prior to the filing of this Complaint.

1 25. Defendants and its employees or agents are excluded from the Class.
2 Plaintiff does not know the number of members in the Class, but believes the Class
3 members number in the hundreds of thousands, if not more. Thus, this matter should
4 be certified as a Class action to assist in the expeditious litigation of this matter.

5 26. Plaintiff and members of the Class were harmed by the acts of
6 Defendants in at least the following ways: Defendants, either directly or through its
7 agents, illegally contacted Plaintiff and the Class members via their cellular
8 telephones by using unsolicited telephone calls, thereby causing Plaintiff and the
9 Class members to incur certain cellular telephone charges or reduce cellular
10 telephone time for which Plaintiff and the Class members previously paid, and
11 invading the privacy of said Plaintiff and the Class members. Plaintiff and the Class
12 members were damaged thereby.

13 27. This suit seeks only damages and injunctive relief for recovery of
14 economic injury on behalf of the Class and it expressly is not intended to request
15 any recovery for personal injury and claims related thereto. Plaintiff reserves the
16 right to expand the Class definition to seek recovery on behalf of additional persons
17 as warranted as facts are learned in further investigation and discovery.

18 28. The joinder of the Class members is impractical and the disposition of
19 their claims in the Class action will provide substantial benefits both to the parties
20 and to the Court. The Class can be identified through Defendants' records or
21 Defendants' agents' records.

22 29. There is a well-defined community of interest in the questions of law
23 and fact involved affecting the parties to be represented. The questions of law and
24 fact to the Class predominate over questions which may affect individual Class
25 members, including the following:

- 26 a. Whether, within the four years prior to the filing of this Complaint,
27 Defendants or its agents placed telephone calls without the recipients'
28

1 prior express consent (other than a telephone call made for
2 emergency purposes or made with the prior express consent of the
3 called party) to a Class member using any automatic telephone dialing
4 system or an artificial or pre-recorded voice system, to any telephone
5 number assigned to a cellular telephone service;

6 b. Whether Plaintiff and the Class members were damaged thereby, and
7 the extent of damages for such violation; and

8 c. Whether Defendants and its agents should be enjoined from engaging
9 in such conduct in the future.

10 30. As a person that received at least one unsolicited telephone call to her
11 cell phone without Plaintiff's prior express contest, Plaintiff is asserting claims that
12 are typical of the Class. Plaintiff will fairly and adequately represent and protect the
13 interests of the Class in that Plaintiff has no interest antagonistic to any member of
14 the Class.

15 31. Plaintiff and the members of the Class have all suffered irreparable
16 harm as a result of the Defendants' unlawful and wrongful conduct. Absent a class
17 action, the Class will continue to face the potential for irreparable harm. In addition,
18 these violations of law will be allowed to proceed without remedy and Defendants
19 will likely continue such illegal conduct. Because of the size of the individual Class
20 member's claims, few, if any, Class members could afford to individually seek legal
21 redress for the wrongs complained of herein.

22 32. Plaintiff has retained counsel experienced in handling class action
23 claims and claims involving violations of the Telephone Consumer Protection Act.

24 33. A class action is a superior method for the fair and efficient adjudication
25 of this controversy. Class-wide damages are essential to induce Defendants to
26 comply with federal law. The interest of Class members in individually controlling
27 the prosecution of separate claims against Defendants is small because the maximum
28

1 statutory damages in an individual action for violation of privacy are minimal.
2 Management of these claims is likely to present significantly fewer difficulties than
3 those presented in many class claims.

4 34. Defendants have acted on grounds generally applicable to the Class,
5 thereby making appropriate final injunctive relief and corresponding declaratory
6 relief with respect to the Class as a whole.

7 **FIRST CAUSE OF ACTION**

8 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

9 **47 U.S.C. §§ 227 *ET SEQ.***

10 35. Plaintiff incorporates by reference all of the above paragraphs of this
11 Complaint as though fully stated herein.

12 36. Each such telephone class was made using equipment that, upon
13 information and belief, had the capacity to store or produce telephone numbers to be
14 called, using a random or sequential number generator, and to dial such numbers.
15 By using such equipment, Defendants were able to effectively make thousands of
16 phone calls simultaneously to lists of thousands of wireless phone numbers of
17 consumers without human intervention. These telephone calls were made without
18 the prior express consent of the Plaintiff and other members of the Class to receive
19 such telephone calls.

20 37. The foregoing acts and omissions of Defendants and its agents
21 constitute numerous and multiple negligent violations of the TCPA, including but
22 not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227
23 *et seq.*

24 38. As a result of Defendants', and Defendants' agents', negligent
25 violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and the Class are entitled to an award
26 of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
27 § 227(b)(3)(B).
28

1 39. Plaintiff and the Class are also entitled to and seek injunctive relief
2 prohibiting such conduct in the future.

3 **SECOND CAUSE OF ACTION**
4 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
5 **TELEPHONE CONSUMER PROTECTION ACT**
6 **47 U.S.C. §§ 227 *ET SEQ.***

7 40. Plaintiff incorporates by reference the above paragraphs 1 through 34
8 inclusive, of this Complaint as though fully stated herein.

9 41. Each such telephone class was made using equipment that, upon
10 information and belief, had the capacity to store or produce telephone numbers to be
11 called, using a random or sequential number generator, and to dial such numbers.
12 By using such equipment, Defendants were able to effectively make thousands of
13 phone calls simultaneously to lists of thousands of wireless phone numbers of
14 consumers without human intervention. These telephone calls were made without
15 the prior express consent of the Plaintiff and other members of the Class to receive
16 such telephone calls.

17 42. The foregoing acts and omissions of Defendants constitute numerous
18 and multiple knowing and/or willful violations of the TCPA, including but not
19 limited to each and every one of the above-cited provisions of 47 U.S.C. §§ 227 *et*
20 *seq.*

21 43. As a result of Defendants' knowing and/or willful violations of 47
22 U.S.C. § 227 *et seq.*, Plaintiff and the Class are entitled to treble damages, as
23 provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47
24 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

25 44. Plaintiff and the Class are also entitled to and seek injunctive relief
26 prohibiting such conduct in the future.

1 **PRAYER FOR RELIEF**

2 **Wherefore**, Plaintiff respectfully requests the Court to grant Plaintiff and the Class
3 members the following relief against Defendants:

4 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**
5 **THE TCPA, 47 U.S.C. §§ 227 ET SEQ.**

6 45. As a result of Defendants', and Defendants' agents', negligent
7 violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class
8 member \$500.00 in statutory damages, for each and every violation, pursuant to 47
9 U.S.C. § 227(b)(3)(B).

10 46. Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiff seeks injunctive relief
11 prohibiting such conduct in the future.

12 47. Any other relief the Court may deem just and proper.

13 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**
14 **VIOLATION OF THE TCPA, 47 U.S.C. §§ 227 ET SEQ.**

15 48. As a result of Defendants', and Defendants' agents', willful and/or
16 knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each
17 Class member treble damages, as provided by statute, up to \$1,500.00 for each and
18 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

19 49. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
20 conduct in the future.

21 50. Any other relief the Court may deem just and proper.

22 **JURY DEMAND**

23 Plaintiff hereby demands a trial by jury on all issues so triable.

24
25 Dated: September 16, 2013 /s/ Ronald A. Marron
26 By: Ronald A. Marron
27 **LAW OFFICES OF RONALD A.**
28 **MARRON, APLC**

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